

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

CLIFFORD FERGUSON,

DEFENDANT.

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*** CASE NO. 2:07CR25-WKW**

SUPPLEMENT TO MOTION TO SUPPRESS

Comes now the defendant, Clifford Ferguson, by and through undersigned counsel and files this his supplement to his motion to suppress and in support thereof states the following:

1. A suppression hearing was conducted on June 6, 2007. Counsel requested leave of Court to supplement with additional legal authority. The request was granted. The following is provided:

2. "Probable cause to search a vehicle is established if, under the totality of the circumstances, there is a fair probability that the car contains contraband or evidence.... In a case involving raw marijuana, this court has held that the odor of marijuana alone can satisfy the probable cause requirement to search a vehicle or baggage.... [T]his court has established a commonsense distinction between the smells of burnt and raw marijuana based on the imperative that the scope of a warrantless search is defined by the object of the search and the places in which there is probable cause to believe that it may be found [T]he smell of burnt marijuana is generally consistent with personal use of marijuana in the passenger compartment of an automobile. In such a case, therefore, there is no fair probability that the trunk of the car contains marijuana and an officer must limit the search to the passenger compartment absent corroborating evidence of contraband.... When, on the other hand, an officer encounters, as was the case here, the overpowering smell of raw marijuana, there is a fair probability that the car is being used to transport large quantities of marijuana and that the marijuana has been secreted in places other than the passenger compartment. Accordingly, in such circumstances, a search of

the trunk is appropriate.” *U.S. v. Downs*, 151 F.3d 1301, 1303 (10th Cir. 1998).

Respectfully submitted,

s/Susan G. James
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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Tommie Hardwick
Assistant United States Attorney
P.O. Box 197
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Respectfully submitted,

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